

## **EXHIBIT G**

**COPY**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU: TRIAL TERM: PART 7

-----X  
In the Matter of the Application of  
DOMINIC MACEDO, ROBERT DONNO, MARK  
SAUVIGNE, and MARLENE LOBATO,  
Objectors,

INDEX NO.  
003124/2016

Petitioners,

-V-

PHILIP M. PIDOT, Candidate, and  
GREGORY PETERSON, PETER KOSINSKI,  
DOUGLAS KELLNER and ANDREW SPANO,  
Commissioners Constituting the  
New York State Board of Elections,

Respondents.

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In the Matter of the Application of  
  
PHILIP M. PIDOT,  
Candidate,

INDEX NO.  
3448/16

Petitioner,

-V-

DOMINIC J. MACEDO, ROBERT DONNO,  
MARK S. SAUVIGNE and MARLENE LOBATO,  
Objectors, and THE NEW YORK STATE  
BOARD OF ELECTIONS,

Respondents.

-----X  
Nassau Supreme Court  
100 Supreme Court Drive  
Mineola, New York 11501  
June 21, 2016

B E F O R E:

THE HONORABLE ARTHUR M. DIAMOND,  
Justice of the Supreme Court.

(APPEARANCES ARE LISTED ON THE FOLLOWING PAGE.)

AVS

A P P E A R A N C E S:

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BY:

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Albany, New York 12210

ALSO PRESENT:

Brendan Quinn

E. O'Brien Murray

Marco Silva, Esq.

(Present during afternoon session)

(Present during afternoon session)

ANDREA V. SLOBODOW, CSR

OFFICIAL COURT REPORTER

\* \* \*

## Proceedings

1 captioned cases, and let the record reflect that I am  
2 serving a copy on my adversary.

3 When Justice Adams made his determination,  
4 it was on an oral application. It was from the bench  
5 and he ruled that the proceeding had not been properly  
6 commenced. There were, at the time, other  
7 applications to dismiss that I made, one being what is  
8 essentially a vanilla-flavored traverse.

9 However, there were other motions to dismiss  
10 which the Court should consider before proceeding on  
11 the merits of this case, one of which being the  
12 petitioners in the Pidot versus Macedo case failed to  
13 exhaust their administrative remedies at the Board of  
14 Elections.

15 What you'll find interesting -- and you have  
16 a little bit of a bulge in the papers there -- is that  
17 we have given the website address to the Court in our  
18 papers and we have provided a flash drive with the  
19 proceedings of the State Board of Elections, at which  
20 the Commissioners took a report from a hearing  
21 officer, that she conducted a full hearing. It went  
22 late into the night.

23 (There was an off-the-record discussion held  
24 between the Court and the Court Officer).

25 MR. CIAMPOLI: The hearing went late into



## Proceedings

1 the night, and at the conclusion of the hearing,  
2 Mr. Pidot's representatives, Mr. Spargo and Mr. Quinn,  
3 who were at the hearing, were offered the opportunity  
4 to put in rebuttal evidence or evidence to  
5 rehabilitate any signatures which the Board, at least  
6 the hearing officer, had preliminarily determined to  
7 be invalid. They elected to wait. The hearing  
8 officer kept the hearing record open for them to make  
9 such a submission for one full day. They failed to do  
10 so. Therefore, they did not exhaust their  
11 administrative remedies in terms of an attempt to  
12 validate the petition. They should be precluded from  
13 doing that for the first time here in a court of law.

14 THE COURT: And that's what your motion is  
15 about?

16 MR. CIAMPOLI: That's part of what the  
17 motion is about.

18 The motion continues: To assert which is  
19 the development of current events, and what I believe  
20 is really the best reason for this Court to dismiss  
21 this proceeding: Impossibility. We are asking this  
22 Court for a hearing on that part of the motion. We  
23 are prepared to produce witnesses from the New York  
24 City Board of Elections, the Nassau County Board of  
25 Elections, and the Suffolk County Board of Elections

## Proceedings

1 Appellate Division has issued an order to this Court  
2 to act forthwith on our petition, our papers, in order  
3 to validate, and I think that's a key point. It's a  
4 validation proceeding and nothing else in this  
5 process. As it relates to Mr. Ciampoli's position on  
6 our failure to exhaust our administrative proceedings,  
7 let me explain to the Court exactly what happened and  
8 why we are here today.

9 State Board hearing was held on Monday, May  
10 the 2nd, and the objectors raised objections to  
11 signatures at the hearing and the hearing officers  
12 reserved many decisions on those objections. The  
13 objectors never stopped making objections; they  
14 continued past the day of the physical hearing, to  
15 continue to make objections. So we never had a clear  
16 view of what the final number was that we were going  
17 to have to defend against. In fact, the Commissioner  
18 had to issue an amended decision because the objectors  
19 kept offering changes and corrections.

20 The reality is, your Honor, I had no duty  
21 to -- or burden to get in the middle of the  
22 administrative proceeding because my opponent  
23 continued to move the goal line away from us and cause  
24 confusion and uncertainty as it related to what the  
25 position that we would take was.

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In the Matter of the Application of  
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 Candidate,

INDEX NO.  
 3448/16

Petitioner,

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DOMINIC J. MACEDO, ROBERT DONNO,  
 MARK S. SAUVIGNE and MARLENE LOBATO,  
 Objectors, and THE NEW YORK STATE  
 BOARD OF ELECTIONS,

Respondents.

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Nassau Supreme Court  
 100 Supreme Court Drive  
 Mineola, New York 11501  
 June 22, 2016

CONTINUED ELECTION MATTER

B E F O R E: THE HONORABLE ARTHUR M. DIAMOND,  
 Justice of the Supreme Court.

(APPEARANCES ARE LISTED ON THE FOLLOWING PAGE.)

AVS



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BY:

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79 Columbia Street  
Albany, New York 12210

ALSO PRESENT:

E. O'Brien Murray  
Marco Silva, Esq.

ANDREA V. SLOBODOW, CSR

OFFICIAL COURT REPORTER

\* \* \*



SUPREME COURT OF THE STATE OF NEW YORK  
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PHILIP M. PIDOT, Candidate, and  
GREGORY PETERSON, PETER KOSINSKI,  
DOUGLAS KELLNER and ANDREW SPANO,  
Commissioners Constituting the  
New York State Board of Elections,  
Respondents,

For an Order Pursuant to Sections 16-100,  
16-102 and 16-116 of the Election Law,  
Declaring Invalid the Respondent's  
Designating Petitions for the Republican  
Party in 3rd Congressional District for the  
June 2016 Primary Election, and Restraining  
said Board from placing the name of  
Philip M. Pidot on ballot as a candidate  
in said Primary Election.

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PHILIP M. PIDOT, Candidate,  
Petitioner,

INDEX NO.  
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DOMINIC J. MACEDO, ROBERT DONNO, MARK S.  
SAUVIGNE and MARLENE LOBATO, Objectors,  
and THE NEW YORK STATE BOARD OF ELECTIONS,

Respondents,

For an Order Pursuant to Election Law  
Section 16-102 to validate the Republican  
Party designating petition which named  
the Petitioner Philip M. Pidot as a  
candidate of such party for Office of  
Representative in Congress, 3rd  
Congressional District of New York in the  
Primary Election of such party to be held  
on June 28, 2016.

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AVS

Nassau Supreme Court  
100 Supreme Court Drive  
Mineola, New York 11501  
June 23, 2016

CONTINUED ELECTION MATTER

B E F O R E:           THE HONORABLE ARTHUR M. DIAMOND,  
Justice of the Supreme Court.

A P P E A R A N C E S:  
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E. O'Brien Murray

ANDREA V. SLOBODOW, RPR, CSR  
DONNA CLARK, RPR, CSR,  
OFFICIAL COURT REPORTERS

1       you allow the primary date to pass, the issue becomes  
2       mootness.

3               THE COURT: Then it seems to me the  
4       impossibility argument potentially would be stronger.

5               MR. CIAMPOLI: It becomes a forest instead of  
6       a tree.

7               THE COURT: How so? How is --

8               MR. CIAMPOLI: Excuse me?

9               THE COURT: Yes.

10              MR. CIAMPOLI: In giving him this adjournment  
11       that would invite a host of problems, legal issues and  
12       questions that frankly this Court doesn't have the power  
13       to address. This primary date is fixed by a combination  
14       of statute and more specifically by an order of District  
15       Court Judge Sharp in the Northern District of New York.

16              The Federal Elections Commission rules  
17       establish a cut-off date to raise money for a primary.  
18       That is fixed to Tuesday's date. That is hard and fast  
19       and can't be changed. This Court doesn't have the power  
20       to change federal law. The petitioner in the Pidot case  
21       had an order from this Court of dismissal on May 11th,  
22       chose not to appeal it, chose to go and wait -- I don't  
23       recall if it was 7 or 9 days -- and not until May 31st  
24       was the matter submitted before this Court on an action  
25       -- on a motion to vacate the oral order of the Court.



1 They then waited until -- the Court decided the case on  
2 the 7th. They waited until the 9th to file their notice  
3 of appeal. The appeal wasn't heard until last week. It  
4 was remanded for trial.

5 The delays in this process has been the result  
6 of tactical and timed decisions that were made by the  
7 petitioner. They have brought us to the eve of --  
8 virtually the eve of the primary. Now they're asking  
9 for time beyond the primary to brief the questions here.

10 THE COURT: I guess the question is: How are  
11 you prejudice then?

12 MR. CIAMPOLI: Only if the Court makes a  
13 determination that the issue becomes moot as of Tuesday.

14 That's true. My consultant points out to me  
15 that we can't spend money on the primary after the  
16 primary.

17 THE COURT: The primary -- if he asks for a  
18 week adjournment, the primary would be passed.

19 MR. CIAMPOLI: Right. We can't pay for a  
20 responsive brief.

21 THE COURT: You can't speak, sir.

22 MR. CIAMPOLI: We can't pay for anything  
23 related to the primary. We can't incur primary expenses  
24 after the primary. That's the simplest way to put it,  
25 and that's federal law. And you can't give me an



1       exception from the federal law.

2               THE COURT: So your application is a motion to  
3       dismiss -- this is what your papers say -- motion to  
4       dismiss due to impossibility to grant the petitioner  
5       relief requested.

6               MR. CIAMPOLI: Correct.

7               THE COURT: The relief requested being what?

8               MR. CIAMPOLI: To validate his petition and to  
9       order his name placed on the primary ballot for the  
10      June 28th federal primary.

11              THE COURT: I don't think the application is  
12      to have me order him placed on the ballot. I think the  
13      petition is to validate petitions. That's what my  
14      ruling will be first. So okay. So we'll hold off on  
15      this for a minute. I'll have opposition to your  
16      application. I will have opposition to your motion to  
17      dismiss.

18              Now the State Board also advised me they want  
19      to be heard on this. I have to figure out some way to  
20      accomplish that. In the interim the State Board faxed  
21      in, I guess, what they would have told us on the  
22      telephone. This is what I have from them. Page 216,  
23      line 7, this is Cameron Breen.

24              MR. SWEENEY: Which one is that? I'm sorry.

25              THE COURT: 216, line 7, the voter purged,

1 moved out of the county October 16, '14. So that  
2 objection is granted.

3 213 line 7, Annette Gibson is a valid voter.  
4 That objection is denied.

5 222, line 6, Kathleen Krombichler,  
6 K-R-O-M-B-I-C-H-L-E-R, is an enrolled Republican. That  
7 objection is denied.

8 226, line 1, that voter is not found. The  
9 objection is granted.

10 225, line 3, Alan Lowell is a valid Republican  
11 voter. That objection is denied.

12 232, line 9, Melissa Cagna, it looks like.  
13 232, line 9 is a valid Republican voter. That objection  
14 is denied.

15 248, line 10 and 250, line 7 were both not  
16 found. So those objections are granted.

17 Since we submitted those I think we have 2  
18 more to call in, but what I'd like to do over the next  
19 five-minute recess is to now do the math, see where we  
20 are and then we'll take up the motion.

21 MR. CIAMPOLI: Did we get rulings on 248,  
22 line 10?

23 THE COURT: Yes. Not found.

24 MR. CIAMPOLI: Not found.

25 THE COURT: That objection was granted. Those

1       were the last two. 248, line 10 and 250, line 7 were  
2       both not found. The objections were granted.

3               Can somebody tell Ron what the results were on  
4       the Gallo --

5               MR. SWEENEY: Plus 9 on Sheet Number 63 and  
6       plus 1 on Sheet Number 68.

7               THE COURT: We'll take five minutes to get  
8       organized and then we'll come back.

9               (Whereupon, a brief recess was taken.)

10              THE COURT: We put a call in to the Board of  
11       Elections to get the final four petition questions  
12       resolved. The four voters, four signatures -- I'm sorry  
13       -- that have to be resolved because they faxed in that  
14       last list, we have a suspicion that they've gone for the  
15       day. I got their voice mail.

16              MR. CIAMPOLI: Yes.

17              THE COURT: I called them at 4:37 and got  
18       their voice mail. So now -- but on the final numbers,  
19       we have Pidot at 1261 which is 11 over what is needed.  
20       We will wait until we hear from, I guess, the Board  
21       tomorrow and the reason I say that is because, with  
22       regard to the motion, there's a couple of things I just  
23       want to put on the record.

24              So, first of all, with regards to your  
25       application to adjourn, what I'm starting to do -- what



1 I decided to do is give you until tomorrow and we'll  
2 convene at like 11 o'clock. But I also want to point  
3 out to you, Mr. Sweeney, that the relief requested in  
4 your petition, in your original papers, the Order to  
5 Show Cause, was that the respondent be directed and  
6 compelled -- respondent being you -- you put New York  
7 County Board of Elections, I think you mean New York  
8 State Board of Elections be directed and compelled to  
9 certify and place the name of the petitioner candidate  
10 on the June 28, 2016 primary election ballot of the  
11 Republican party for the office of Congress. So I was  
12 wrong before when I said that your application was to  
13 validate the petitions; right? That's why I don't think  
14 it's possible I can give you an adjournment to next  
15 week. You asked that he be placed on the ballot. I  
16 think that would have to be done as soon as possible.

17 Then the second thing you asked for was  
18 prohibiting the respondent Board from certifying or  
19 causing the printing of the June 28th primary election  
20 ballot unless the name of the petitioner is placed on  
21 such ballot. It's another thing I didn't realize was in  
22 here, but it is.

23 So, so -- well, as of now, the position is  
24 subject to and I don't think it's going to matter what  
25 the Board tells us about the 4 signatures. I think you



1 submitted enough signatures on any of our counts that  
2 you submitted enough ballots to validate signatures to  
3 be placed on the ballot. With regard to the relief  
4 requested on B and C, as I told you this morning, the  
5 State Board's position is that it would be impossible to  
6 give you the granted relief. We will come in tomorrow  
7 morning and I'll let you argue on the record without  
8 papers what your position is, and then I will have the  
9 Board on the phone as well because they specifically  
10 said that they want to be heard on this, and they are a  
11 party and then I'll issue a ruling.

12 Yes, sir.

13 MR. CIAMPOLI: I'd like to create a full  
14 record and put the Nassau, Suffolk and City Boards of  
15 Elections' testimony into evidence that they cannot  
16 physically at this point do the election and that it's  
17 impossible for them to do the election and comply with  
18 the law.

19 THE COURT: The representatives of the State  
20 Board of Elections tomorrow will state that on behalf of  
21 the local boards, I think that's satisfactory.

22 MR. CIAMPOLI: I will tell you, I think you  
23 need a little bit more than that because there are  
24 several problems that are unique to each of the county  
25 Boards of Elections. Suffolk and Nassau have already

1       deployed their machines.

2               THE COURT: My point is that I think -- look,  
3       you can bring them and we'll conference with the Board  
4       and we'll go on the record around 11 o'clock, as I said.  
5       I'm just saying that it may be, when we are done with  
6       that, I may feel that I can grant the application on the  
7       papers. That's all I'm saying.

8               MR. CIAMPOLI: Well, let me ask you this.  
9       What I might be able to do is have them give the Court  
10      affidavits. The problem is Mr. Sweeney will object  
11      because he can't cross-examine the affidavit.

12              THE COURT: There's no requirement that I have  
13      testimony on a motion.

14              MR. CIAMPOLI: True.

15              THE COURT: If I can resolve the motion on  
16      papers, I resolve it on the papers.

17              MR. CIAMPOLI: True. But the only reason I  
18      could think of why the folks in Brooklyn did not grant  
19      my motion for impossibility last Friday was because I  
20      didn't have a record and in the waning minutes before  
21      primary day, I don't want to have the same problem  
22      again.

23              THE COURT: Okay.

24              MR. SWEENEY: If I may, your Honor, my  
25      interpretation of what the Appellate Division did, the

1 argument was made, and they passively discouraged it  
2 by ignoring it, I think, alternative to the black and  
3 white primary or Mr. Pidot does not exist. That's why  
4 we had asked for the extent of time. I think you had  
5 authorities under 1610(2) in case of irregularities to  
6 stay the primary days. It's four and a half months away  
7 for the general. Mr. Ciampoli pointed out --

8 THE COURT: In the instance of irregularities?

9 MR. SWEENEY: Correct. Much more regular than  
10 anything than this I would submit to you, your Honor.

11 MR. CIAMPOLI: Your Honor --

12 MR. SWEENEY: Can I finish?

13 THE COURT: Let him finish.

14 MR. SWEENEY: I think the Board has certain  
15 powers under -- what section is it -- Article 3 -- to  
16 emergency situations, but beyond that, Judge Sharp has  
17 already set a precedent for changing the federal law  
18 from the bench. So whether it's fundraising or picking  
19 an alternative date, there is plenty of time for all of  
20 that and for us to seek relief in other ways. This  
21 notion that Mr. Ciampoli puts out there that it's black  
22 and white, assuming they were going to get that from  
23 Judge Adams by conveniently not telling him about --

24 MR. CIAMPOLI: I'm going to take exception  
25 to --



1 MR. SWEENEY: That he use --

2 THE COURT: Don't do that in this courtroom,  
3 please.

4 MR. SWEENEY: Which caused this delay in the  
5 first instance, your Honor.

6 THE COURT: I don't know what caused the  
7 delay. The time that you spent, both of you, whoever  
8 brought the appeal was an extraordinary amount of time  
9 that went by before the appeal was perfected.

10 Let me tell you this, I'm not going to issue  
11 any stay of any elections. That I won't do. In other  
12 words, your remedy would be the same as anybody else who  
13 gets an order here. You would take that, you would take  
14 my order to the Appellate Division or the federal court  
15 and apply for a stay from them. That certainly makes  
16 sense to me, but I am not going to issue a stay after I  
17 do my decision.

18 One second.

19 (Whereupon, a brief pause was taken in the  
20 proceedings.)

21 THE COURT: Mr. Quail is still there. He sent  
22 me his direct line, but if you -- so I guess then,  
23 Mr. Sweeney, I will give you the option of coming back  
24 tomorrow or we can do it now with the Board of Elections  
25 on the phone.



1 MR. SWEENEY: I would just as soon do it now,  
2 your Honor.

3 (Whereupon, proceedings were adjourned to  
4 chambers. Present in Justice Diamond's chambers were  
5 Mr. Ciampoli, Mr. Sweeney, Mr. Brian Hiller, Mr. Daniel  
6 Greenblatt from the law department, Justice Diamond's  
7 law secretary and Justice Diamond.)

8 THE COURT: Okay, Mr. Quail. I'm going to ask  
9 you and Miss Galvin to give your appearance so that the  
10 reporter can take it down.

11 MR. QUAIL: My name is Brian Quail, counsel  
12 for the New York State Board of Elections.

13 MS. GALVIN: Kimberly Galvin, co-counsel for  
14 the Board.

15 THE COURT: So we're at the stage where the  
16 number of signatures submitted are enough to qualify on  
17 the ballot. So we finished all the objections, you  
18 know, half a hour ago or so.

19 So Philip Pidot's Order to Show Cause had 3  
20 branches of relief. The first one was to declare that  
21 the designating petitions naming the petitioner are  
22 sufficient, legal and proper. So that application is  
23 going to be granted.

24 B is that the respondent Board be directed and  
25 completed -- I'm sorry -- be directed and compelled to

1 certify and place the name of the petitioner candidate  
2 on the June 28th primary ballot.

3 C, prohibiting the respondent Board from  
4 certifying or causing the printing of the ballot unless  
5 the name of the petitioner, Philip Pidot, is placed on  
6 the ballot for the Republican party primary.

7 Just prior to beginning the hearings on the  
8 objections as directed by the Appellate Division,  
9 Mr. Ciampoli presented a motion to dismiss which had  
10 several branches to it, but the one that I'm really left  
11 with at this point is found on page 13, motion to  
12 dismiss due to impossibility to grant the petitioner  
13 relief requested. So at that point it would be branches  
14 B and C of the Order to Show Cause. Mr. Ciampoli  
15 requested that he be allowed to produce representatives  
16 from the Nassau County, Suffolk County and Queens --

17 MR. CIAMPOLI: New York.

18 THE COURT: -- and New York City Board of  
19 Elections to basically establish through testimony and  
20 protect his record in case it goes to the Appellate  
21 Division that there would be live testimony under oath  
22 basically telling me that the relief can no longer be  
23 granted due to impossibility.

24 Mr. Sweeney has not put in opposition. I told  
25 him I would permit him to orally argue the opposition.

1 I told Mr. Ciampoli that it might be unnecessary for me  
2 to have a live witness because, obviously, motions can  
3 be decided on the papers, and you know -- so I'm leaving  
4 him with the potential to call witnesses if, in my  
5 discretion, it's necessary.

6 As I said, Mr. Sweeney did not put in  
7 opposition, but -- so I'll allow him to orally argue the  
8 motion. And he also requested in the courtroom a few  
9 minutes ago a one-week adjournment to brief the issue.  
10 Mr. Ciampoli opposed the adjournment request primarily  
11 -- when I asked him what the prejudice would be, then,  
12 obviously, Mr. Sweeney would be bypassing participating  
13 in the June 28th election, and he stated that he would  
14 be unable to spend money on legal fees related to the  
15 primary past the primary date, and I don't know whether  
16 or not that's accurate or not because I'm not familiar  
17 with that election law.

18 First of all, do you want to be heard on the  
19 application for the adjournment?

20 MR. QUAIL: With respect to the application  
21 for the adjournment, your Honor, we defer to the Court's  
22 decision on how it wants to manage its own calendar.

23 THE COURT: So my decision was I was willing  
24 to give him till tomorrow at 11 o'clock to get himself  
25 organized or whatever he wants to do, and then, when we



1 found out that you were still there, he said he would  
2 prefer to just go ahead instead of coming back tomorrow.  
3 That's where we are at.

4 So in order of the caption, Mr. Pidot is  
5 noticed before the Board so I'll let Mr. Sweeney oppose  
6 the application for the motion to dismiss first.

7 MR. SWEENEY: Yes, your Honor. Thank you.

8 THE COURT: Can you hear him?

9 MR. QUAIL: Yes.

10 MS. GALVIN: Yes.

11 MR. SWEENEY: Yes, your Honor.

12 THE COURT: He has an upstate kind of voice.  
13 I figured you would.

14 MR. SWEENEY: What we have here is an  
15 extraordinary circumstance in which the Court is being  
16 asked to potentially violate, I believe, the voter  
17 rights of citizens to pick a candidate for the United  
18 States House of Representatives. I think there's  
19 precedent out there. This is based solely on judicial  
20 manipulations of obscure and historically prejudicial  
21 ballot excess requirements of New York.

22 And I think we should look at the Forbes, the  
23 New York Republican State Committee, a Court of Appeals  
24 case, 2nd Circuit Court of Appeals case from 1996 to  
25 kind of establish that as the foundation piece. I think



1       there are alternatives that exist under the current New  
2       York State Election law. One of them is Section  
3       1610(2)(3) which I believe provides this Court the  
4       authority or some court the authority to, because of the  
5       irregularities that have occurred here, to reschedule  
6       this election, this primary election, on a different  
7       date.

8               Much of the case law that exists out there  
9       relates either to general election cases or primary  
10      election cases in the traditional course where you have  
11      a primary in September with only a few weeks leading up  
12      to a general election in November. In this instance we  
13      have four and a half months within which to get this  
14      right. Judge Sharp, when he ordered his decision to  
15      hold the primary in June, frankly did so -- that's an  
16      arbitrary date and number that he chose. And it was  
17      chosen. I would suspect that, as it relates to campaign  
18      fundraising and as it relates to rescheduling a primary,  
19      either this court or we could go to federal court to  
20      have those matters resolved and the interests and rights  
21      of each of the individuals protected.

22             But to ask this Court to take what is  
23      otherwise a legally valid candidate off the ballot and  
24      cancel the voters' opportunities to vote and be  
25      represented and have an opportunity to be represented is

1 extraordinary.

2 Finally, I think, while it's never been done,  
3 I think under Section 3108 of the State Election Law the  
4 state board itself in an emergency situation -- I don't  
5 quite know if this qualifies, but I would suggest that,  
6 because we have never been here before, we might be well  
7 within our rights to qualify this as an emergency. The  
8 state board itself, I think, could take the same  
9 position that in a subsequent date and time a primary  
10 election could be held, say, for example, in September  
11 when they always were held in the past, or in August or  
12 whatever number -- or whatever the date the board could,  
13 but to deny Mr. Pidot the opportunity to run in a  
14 primary and to deny the voters the choice and the right  
15 to have a choice and vote here, I think, is  
16 extraordinary and I would caution against it and ask  
17 that we not do that.

18 THE COURT: Mr. Ciampoli, you want to be  
19 heard?

20 MR. CIAMPOLI: Yes.

21 Let's start with the argument that this Court  
22 can somehow alter the date of the federal election that  
23 was ordered.

24 THE COURT: Can you hear him up there?

25 MR. QUAIL: Yes.

1 MS. GALVIN: Yes.

2 THE COURT: Okay. Good.

3 MR. CIAMPOLI: That was ordered by a federal  
4 judge. This Court does not possess the power to alter  
5 Judge Sharp's order, which I have previously handed up  
6 to the court, which dictates the election calendar for  
7 this election.

8 As to the argument that Article 3 would  
9 empower the Court or the Board of Elections, itself, the  
10 State Board of Elections to order an additional day of  
11 voting, I have two replies to that. Number 1, I will  
12 start by just reading the title of the section that  
13 Mr. Sweeney is relying on, Disaster, additional day for  
14 voting. It then goes on to describe the disasters as  
15 fire, earthquake, tornado, explosion, power failure, act  
16 of sabotage, enemy attack or other disaster.

17 If I concede, arguendo, that there's a  
18 disaster, I would first assert this is of Mr. Pidot's  
19 making. It is his delay during the course of this  
20 litigation that resulted in us being here today and not  
21 having this case resolved much earlier as the election  
22 calendar set by Judge Sharp anticipated.

23 Number 2, I don't think that this set of  
24 circumstances fails within that power.

25 Under 1610(2) of the Election Law, this Court



1 is entitled to order a new primary election -- and let  
2 me just locate -- sub 3 of 1610(2), the Court may direct  
3 the reassembling of any convention or the holding of a  
4 new primary election or caucus where it finds there has  
5 been such fraud or irregularity as to render impossible  
6 a determination as to who rightfully was nominated or  
7 elected.

8 Number 1, that power is a limited power as was  
9 held in Delgato versus Sutherland by the New York State  
10 Court of Appeals and as was held by our 2nd Department  
11 in Mondello versus Nassau County Board of Elections  
12 relying on the matter of Corrigan which was a 1930s or  
13 '40s Court of Appeals case. The case law says that the  
14 Election Law is a limited grant of authority to the  
15 Court. Clearly, under the language of 1610(2) the Court  
16 has the authority to grant a new primary where one has  
17 already been held, not to move the date of a primary,  
18 not to order a different primary than has been  
19 established by law, and there must be a finding that  
20 there was an irregularity or fraud that prevents the  
21 Court from determining who rightfully won.

22 There are a host of cases that have taken up  
23 such questions. Those cases involve mathematical and  
24 statistical computations of how many irregularities you  
25 must have to prove before you are entitled to a new

1 primary. All of them hinge on one key fact that is  
2 totally absent from this case, and that key fact is that  
3 there was a primary that was held.

4 Here I believe the Court would be proper to --  
5 it would be proper for the Court to hold Mr. Sweeney and  
6 Mr. Pidot to the four corners of their petition and  
7 their Order to Show Cause. They wanted Mr. Pidot on the  
8 ballot for the June 28th primary. That, at this point  
9 in time, we submit and we request that we be able to  
10 make a full record on it, is impossible. It was  
11 impossible last week. I tend to agree with Mr. Sweeney  
12 on the one point that the Appellate Division ignored  
13 what I believed was the elephant in the room and that it  
14 was impossible then, it's impossible today.

15 We've pointed out previously to the Court that  
16 under, I believe it's Section 4118 of the Election Law,  
17 the Boards of Election, the New York City, Nassau  
18 County, Suffolk County boards must all publish notice of  
19 a primary. I'm prepared to offer into evidence, your  
20 Honor, the paper of record in the City of Glen Cove  
21 because where a city falls within the political  
22 subdivision, two notices are required, one in the paper  
23 of general circulation in the county and one in the  
24 paper of general circulation within the city or each  
25 city within the subdivision.

1           The Glen Cove newspaper publishes on  
2       Wednesdays. So it's now physically impossible for the  
3       board to satisfy the Election Law requirement that it  
4       publish notice. I have said this before and I mean it  
5       from the bottom of my heart. What Mr. Pidot wants this  
6       court to do is order a primary to be held and he's  
7       hoping that no one shows up because that's how he could  
8       steel the results. This is part of a plan that you have  
9       here. What we have here is he's asking the Court to do  
10      things it can't do, move the date of the primary, order  
11      a new primary where there has been no primary held,  
12      order a change in a federal district court order which,  
13      you don't have the authority to do, and quite frankly,  
14      this Court unfortunately or fortunately, as the case may  
15      be, is a part of what is known as the State of New York.  
16      And the defendant in Judge Sharp's action in which he  
17      ordered a special federal primary date so as to protect  
18      the soldiers and sailors under The Move Act, the  
19      defendant is the State of New York. So this would be a  
20      state action to violate Judge Sharp's order, and I can't  
21      imagine this Court would do that. The other defendants  
22      are my friends at the State Board of Elections who are  
23      on the phone; okay. I think they're here and they're  
24      going to tell you they can't do it, and they don't want  
25      to be placed in violation of a federal court order.



1 Mr. Pidot, on the other hand, doesn't care about that.

2 We've cited a number of cases. The Court of  
3 Appeals in Hunter versus Orange County Board of  
4 Elections ruled that a case that was well outside the --  
5 we have Friday, Saturday, Sunday, Monday, four days that  
6 we have before the primary. That it is impossible to  
7 grant the relief requested. I was involved in that  
8 case. I represented the Independence Party in that  
9 matter and there was proof and the Appellate Division  
10 was prepared to order a new primary election for the  
11 Independence Party, and the Boards of Elections and the  
12 candidate on the other side said, wait a minute. It's  
13 too late. You can't do a new primary election and hold  
14 a general election in such a short time.

15 Here you can't do the notices to the voters,  
16 you can't comply with the Federal Move Act and you can't  
17 comply with the Federal Voting Rights Act. That's where  
18 our counties in this district have their own nuances.

19 If you were going to hear from the New York  
20 City Board of Elections -- I will do this by way of an  
21 offer of proof -- you will hear they have to set their  
22 ballot, build their ballot on the computer. Their  
23 ballot then must be, under Federal Voting Rights Act  
24 terms, translated into Spanish, Korean, Chinese and  
25 Bengali. That is a multi-day process. Because the

1 ballot has to be set. The ballot has to be printed. It  
2 then has to go to two interpreters. Each interpreter  
3 interprets the ballot into the respective language.  
4 They then check with each other to see that they got it  
5 right. The candidates are then afforded an opportunity  
6 to inspect the ballots before they are put out to the  
7 voters. You can't do that in four days, your Honor.  
8 You just can't.

9 THE COURT: Okay.

10 MR. CIAMPOLI: You're going to hear that each  
11 of the Boards has either totally or by tomorrow they  
12 will probably all have totally deployed their machines.  
13 They would have to reprogram their machines.

14 MR. SWEENEY: I'm sorry, your Honor. No one  
15 is arguing the impossibility argument. We are simply  
16 talking about what the relief is going to be at the end.  
17 We have conceded that fact. While it's an interesting  
18 tutorial that Mr. Ciampoli is giving, as I pointed out  
19 at the beginning, the Hunter case is a case that relates  
20 to the normal course with a September primary and a  
21 November election. We're not talking about that here.  
22 We are talking about four and a half months and whether  
23 we need to go to federal court to get the orders that  
24 are necessary to protect our interests and rights or  
25 whatever. It's four and a half months. It's not an

1 impossibility to meet the requirements of the Voter  
2 Rights Act. It's not an impossibility to meet the  
3 requirement of the Federal Move Act. These all can be  
4 done in a four-and-a-half-month period. It's a matter  
5 of working that process out.

6 THE COURT: Let me hear from Mr. Ciampoli.

7 MR. CIAMPOLI: Your Honor, I have one last  
8 thing I want to add. Our sister court in Suffolk County  
9 in Helmsly (phonetic) versus Matthews -- I'm not going  
10 to read the decision or part of it. Justice Mary Smith  
11 did a very good review of the law in doing what the  
12 right thing is to do here, dismissing a case where there  
13 was a candidate who was duly nominated, who was seeking  
14 to alter the ballot, who may very well have been  
15 entitled to alter the ballot, but the only remedy  
16 available to the Court in Helmsly v. Matthews relies on  
17 Hunter. You have the sister cases.

18 THE COURT: The only remedy to the Court being  
19 what?

20 MR. CIAMPOLI: Dismissal.

21 THE COURT: So I'll hear from Mr. Quail and  
22 Miss Galvin if you want to be heard.

23 MR. GALVIN: Your Honor, this is Kimberly  
24 Galvin. We just heard Mr. Sweeney say the impossibility  
25 argument is not being contested at this point. We also



1 heard Mr. Ciampoli's argument. We would agree at this  
2 late date it would be impossible to, in fact, add him to  
3 the primary that is to take place next Tuesday. All of  
4 the arguments about the machines and the testing and  
5 languages do hold true.

6 THE COURT: Can you represent to me that if  
7 the heads of the City, Nassau and Suffolk Boards of  
8 Elections were here that they would tell me that?

9 MS. GALVIN: Yes, your Honor. I can assert  
10 for you that there's been conversations on a bipartisan  
11 basis with all three boards in question, and all have  
12 agreed that it is too late to change the ballot for next  
13 Tuesday.

14 THE COURT: Okay. So okay. Anything else  
15 from you?

16 MS. GALVIN: Just briefly, your Honor. On the  
17 other arguments and the request for relief that are  
18 being made, the State Board doesn't necessarily believe  
19 that 3108, the extraordinary relief under that section,  
20 we don't feel that is necessarily appropriate here and  
21 also with relief under 1610(2) certainly that is a legal  
22 issue and we would simply caution the Court, to exercise  
23 that, there are time frames that would be necessary  
24 there such as the date would have to be 50 days out in  
25 order to be compliant, but other than that, that's a

1 decision that the Court -- obviously, it's a legal  
2 decision that you would need to make.

3 THE COURT: Okay.

4 MR. QUAIL: The 50-day requirement, your  
5 Honor, stems from the Federal Move Act that requires  
6 that ballots be sent out at least 45 days before the  
7 elections to which it relates. That's the significance  
8 of the 50 days.

9 THE COURT: Thank you, everybody. What I'm  
10 going to do is reserve a decision and have a decision in  
11 the morning. So you will have an order which will  
12 vesicate the need to order the minutes. You will have  
13 an actual order to do whatever you want to do. I will  
14 e-mail it out so no appearances are necessary.

15 MR. SWEENEY: Thank you.

16 MR. CIAMPOLI: I ask the Court hold the record  
17 open for affidavits from each of the local boards.

18 THE COURT: Do you have any objection to that?

19 MR. SWEENEY: No objection to that.

20 THE COURT: Mr. Quail, Miss Galvin, I want to  
21 make sure I have your e-mail addresses.

22 MR. QUAIL: My e-mail address is  
23 Brian.Quail@electionsNewYork.gov.

24 MS. GALVIN: It's Kimberly.Galvin with the  
25 same domain.

1 THE COURT: Okay. Thank you very much for  
2 hanging around tonight. I appreciate it, and I  
3 appreciate your help on this emergency; okay.

4 MR. QUAIL: No problem, Judge.

5 MS. GALVIN: Thank you.

6 THE COURT: Thank you. So you have a card or  
7 something with your e-mail on it?

8 MR. SWEENEY: Yes.

9 Thank you, your Honor.

10 MR. CIAMPOLI: Thank you, your Honor.

11 \* \* \* \* \*

12 It is certified that the above and foregoing  
13 minutes of 6/21, 6/22 and 6/23 are a true and  
14 accurate record of the proceedings.

15

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ANDREA V. SLOBODOW, CSR, RPR  
OFFICIAL COURT REPORTER

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DONNA CLARK, CSR, RPR  
OFFICIAL COURT REPORTER

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## I N D E X

WITNESS

6/21/16  
 Kevin Michael Donnelly  
 Luke Ting  
 Carolyn Mastropieri

6/22/16  
 Lawrence P. Bassett

6/23/16  
 Tony Gallo  
 Peter Budraitis

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